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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/913,426	03/12/2002	Kevin Cogley	P-6265	9779

7590

03/25/2004

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EXAMINER

WEEKS, GLORIA R

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 03/25/2004

14

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/913,426

Applicant(s)

COGLEY ET AL.

Examiner

Gloria R Weeks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 December 2003.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-8, 10 and 11 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 2-8, 10 and 11 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Response to Amendment

1. This action is in response to Applicants' amendment received on December 24, 2003.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 2-4, 6-8 and 10-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Young et al. (USPN 5,014,876).

In reference to claims 2-8 and 10-11, Young et al. discloses a fastener delivery apparatus comprising: a fastener delivery tube (18) and a fastener supply (13); the delivery tube (18) being connected to the fastener supply (13) and connectable to the setting tool (20); a source of pressurized gas (48) having an outlet (45, 51) that is connected to the delivery tube (18; column 4, lines 17-20); a movable transfer passage (35) for transferring a fastener between the fastener supply (13) and the delivery tube (18); a seal (21) associated with the transfer passage (35), the seal having an internal cross-section that is matched in shape and dimension of the delivery tube (18; figure 2).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Young et al. (USPN 5,014,876) in view of Smart et al. (USPN 5,035,353).

Regarding claims 5, Young et al. discloses a fastener delivery apparatus with a movable transfer passage (35) that slides into orientation with the delivery tube (18). Smart et al. teaches a fastener delivery apparatus having a movable transfer passage (20) in the form of a ball valve (22) that is rotatable between a first position in communication with the fastener supply (14) and a second position in communication with a source of pressurized air (column 1, lines 50-54) and the delivery tube (34). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the movable transfer passage of Young et al. to the movable transfer passage of Smart et al. since the examiner takes Official Notice of the equivalence of a sliding mechanism and rotatable mechanism for their use in the art of transferring fasteners and the selection of any of these known equivalents to relocate the fastener from one path of travel to another path of travel would be within the level of ordinary skill in the art.

Response to Arguments

6. Applicant's arguments with respect to claims 2-8 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion


7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Refer to attachment for notice of references cited and recommended for consideration based on their disclosure of limitations of the claimed invention.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria R Weeks whose telephone number is (703) 605-4211. The examiner can normally be reached on 7:30 am - 6:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on (703) 305-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


grw
March 18, 2004

Gloria R Weeks
Examiner
Art Unit 3721



Rinaldi I. Rada
Supervisory Patent Examiner
Group 3700